Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of Acceleration of Broadband Deployment Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting	WC Docket No. 11-59

REPLY COMMENTS OF THE CITY OF DETROIT MICHIGAN MUNICIPAL LEAGUE MICHIGAN TOWNSHIPS ASSOCIATION AND PROTEC

John W. Pestle (P25471)
Timothy J. Lundgren (P62807)
Varnum LLP
333 Bridge Street, N.W.
P.O. Box 352
Grand Rapids, Michigan 49501-0352
(616) 336-6000

Counsel for the City of Detroit, Michigan Municipal League and Michigan Townships Association

Michael J. Watza (P38726)
Kitch Drutchas Wagner Valitutti & Sherbrook
1 Woodward 24th Floor
Detroit, MI 48226
(313) 965-7983

Counsel for PROTEC

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SUMMARY

As Michigan Local Governments pointed out in their initial comments in this docket, because Michigan has already addressed the right-of-way matters raised in the Notice of Inquiry (NOI) there is no need for Federal action as to such matters as to Michigan. The comments by providers agree. Not only did no provider cite any action in Michigan as showing problems on right-of-way matters, but two providers (NextG and PCIA) set forth Michigan's Metro Act as a model they would like the rest of the nation to follow! This conclusively shows that there is no basis for any Commission action as to Michigan on right-of-way matters – but it also confirms (as the comments of the National League of Cities, et al point out) that there is no need for federal regulations elsewhere, either.

By way of background, a decade ago Michigan addressed the right of way matters described in the NOI. The result was legislation, commonly known as the Metro Act,[1] which provides a comprehensive, statewide solution that streamlines use of the rights of way by broadband and telecommunications providers. For such providers the Metro Act assures, *inter alia*:

- Timely access to the rights of way,
- A standard statewide application form,
- Standard, statewide permit forms for use of the rights of way, and
- Uniform statewide fees.[2]

[1] Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, Mich. Comp. Laws Ann. §§ 484.3101 et seq. ("Metro Act" or "the Act").

[2] Michigan's uniform fees were commented on favorably by the Commission a year ago in *Omnibus Broadband Initiative, FCC, Connecting America: The National Broadband Plan* (2010) ("National Broadband Plan") at 113.

While the Metro Act does not generally address wireless matters, there is no need or factual basis for Commission action on wireless matters. The alleged "facts" cited by providers as showing a need for action, are (as to the Michigan communities named) are in the range of 90% to 100% incorrect. The error rate for the rest of the nation appears to be in a similar range. For example, most or all of the Michigan communities cited as using "problematic consultants" who engage in alleged abuses in fact use no consultants at all! And all the Michigan communities alleged to ban cell towers in some or all zoning districts in fact allow cell towers and antennas in all districts.

The Commission was wise in requiring providers to "name names" and provide specifics as to claimed abuses, so that parties could respond and give the Commission a "factual basis to determine the nature and extent of any problems". With error rates approaching 100% in the data submitted by providers, there is simply no factual basis for Commission action on wireless matters.

In fact, providers' claimed leasing and zoning problems are largely self-inflicted: They use poorly trained and incompetent contractors to lease and zone cell sites, and the results are often sloppy, incomplete and inaccurate zoning applications. The level of provider "competence" is well-illustrated by the City of Lansing's experience: There only after five years, multiple zoning hearings, and a Federal Court suit challenging denial of zoning approval did T-Mobile abandon a proposed location for a cell tower -- because it finally went to the site and found out it was under water part of the year, and thus not buildable!

Provider claims of problems leasing sites for cell towers -- and in a non sequitur claiming that thus zoning restrictions should be relaxed -- again are largely self-inflicted. This is due to provider demands for overreaching, one-sided terms in cell tower leases, such that many

landlords understandably refuse to enter into such leases, or even consider them. Before the Commission credits any claims of "site unavailability", it should ask each of the major providers for their standard leasing terms, and examine them from a real estate standpoint – with the assistance of a person who works with or represents landlords. While it is may be permissible for companies to propose that property owners accept one-sided deals (some certainly will), it is not a path to rapid broadband deployment.

More generally, Michigan Local Governments agree with and support the Initial and Reply Comments of the National League of Cities, et al., in this proceeding.

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I. INTRODUCTION

A. Overview:

These comments are in two parts.

Part II addresses right-of-way matters. As to such matters, the Commission lacks the legal authority to act. The State of Michigan has already acted on the right-of-way matters raised in the Notice of Inquiry (NOI).[3] There is no need for Federal action as to such matters as to Michigan. Providers agree. Not only did no provider cite any action in Michigan as showing problems on right-of-way matters, but two providers (NextG and PCIA) set forth Michigan's Metro Act[4] as a model they would like the rest of the nation to follow, which certainly implies no

[3] *In the Matter of Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting*, FCC 11-51, WC Docket No. 11-59, Notice of Inquiry (April 7, 2011) ("NOI").

[4] Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, Mich. Comp. Laws Ann. §§ 484.3101 et seq. ("Metro Act" or "the Act").

significant problems in Michigan. But even with the Metro Act "streamlining" broadband deployment, Michigan suffers from much the same deficiencies in deployment as the rest of the U.S., confirming the point that there is no relationship between rights-of-way management or fees and broadband deployment, and thus no basis for Commission action.

Part III addresses wireless matters, and shows that there is no factual basis or need for Commission action on wireless matters. The alleged "facts" cited by providers as showing a need for action, are (as to the Michigan communities named) from largely to 100% incorrect. The error rate for the rest of the nation appears to be in a similar range. There is thus no factual basis for Commission action.

And provider's claimed leasing and zoning problems are largely self-inflicted: They use poorly trained and incompetent contractors to lease and zone cell sites, and the results are often sloppy, incomplete and inaccurate zoning applications. Provider claims of problems leasing sites for cell towers again are largely self-inflicted. This is due to provider demands for overreaching, one-sided terms in cell tower leases, such that many landlords understandably refuse to consider or enter into leases.

More generally, Michigan Local Governments agree with and support the Initial and Reply Comments of the National League of Cities, et al., in this proceeding.

B. Commenters: These reply comments are filed jointly by the City of Detroit, the Michigan Municipal League, the Michigan Townships Association and PROTEC. Between them these parties represent all local government entities in Michigan, and are referred to herein as "Michigan Local Governments".

Specifically, the City of Detroit with over 700,000 residents is the largest city in the State of Michigan, and has the most extensive (in terms of miles of streets), most complicated and

most expensive public rights-of-way in the State, as well as the largest number of broadband and telecommunications providers using them. Due to its large population and large land area (143 square miles, one of the largest in the nation) Detroit has more experience with wireless zoning than other communities in Michigan.

The Michigan Municipal League is a non-profit Michigan corporation whose purpose is to improve local government and administration through cooperative effort. Its membership is comprised of some 521 Michigan local governments.

The Michigan Townships Association promotes the interests of 1,242 townships by fostering strong, vibrant communities; advocating legislation to meet 21st century challenges; developing knowledgeable township officials and enthusiastic supporters of township government; and encouraging ethical practices of elected officials who uphold the traditions and unique characteristics of township government and the values of the people of Michigan.

PROTEC is an organization of Michigan cities interested in protecting their citizens' governance and control over public rights-of-way, and their right to receive reasonable compensation from the utilities that use public property.

II. RIGHT OF WAY MATTERS -- THERE IS NO AUTHORITY OR NEED FOR FEDERAL ACTION, GENERALLY, OR AS TO MICHIGAN

A. Introduction: Two initial points need to be noted: First, as set forth in Michigan Local Governments initial Comments, and in other municipal comments in this docket, the Commission lacks the authority to take the actions on right-of-way matters suggested by the NOI, or requested by providers.

Second, as the Comments of the National League of Cities (NLC), et al., in this proceeding in particular showed (and presumably the NLC Reply Comments will also show), there is no relationship between local right of way fees or management and broadband deployment. Michigan illustrates this, because despite Michigan's having enacted the Metro Act nearly a decade ago to expedite telecommunications and broadband deployment, Michigan basically suffers from the same deficiencies in broadband deployment as the rest of the nation.

B. Metro Act: In its initial comments ("Initial Comments") in this docket, Detroit, the Michigan Municipal League, the Michigan Townships Association and PROTEC described how in 2001 and 2002 Michigan addressed the right-of-way matters described in the NOI. The result was legislation, commonly known as the Metro Act, which provides a comprehensive, statewide solution that streamlines use of the rights-of-way by broadband and telecommunications providers. For such providers the Metro Act assures, among other things:

- Timely access to the rights-of-way,
- A standard statewide application form,
- Standard, statewide permit forms for use of the rights-of-way, and
- Uniform statewide fees.[5]

And for municipalities, the Metro Act preserves *local control and management of the rights-of-way*: Permits to use the rights-of-way are applied for and issued locally, and the Metro Act expressly provides that it:

> "[S]hall not limit a municipality's right to review and approve a provider's access to and ongoing use of a public right-of-way or limit the municipality's authority to ensure and protect the health, safety, and welfare of the public.[6]

[5] Michigan's uniform fees were commented on favorably by the Commission a year ago in *Omnibus Broadband Initiative, FCC, Connecting America: The National Broadband Plan* (2010) ("National Broadband Plan") at 113.

With Michigan already having addressed the right-of-way matters raised in the NOI there is no need for Federal action as to such matters in Michigan.

To go into more detail, the Metro Act, application form and permit forms were worked out collaboratively by providers, municipalities and business groups in 2001 and 2002 under the leadership of Governor John Engler and the Michigan Public Service Commission (MPSC or Michigan Commission). They were thus worked out by the parties who would benefit and implement them; addressed the specific legal and factual situation present in Michigan; and were accompanied by a comprehensive educational outreach program.

Of key importance to this Commission, the Metro Act and its related documents addressed the goal of streamlining broadband and telecommunications provider access to the public rights-of-way *in the context of the unique issues present in Michigan*. These included state constitutional and regulatory issues, claims by ILEC's of "grandfathered" rights to use the rights-of-way, and nearly a decade of litigation which had failed to resolve the fees, terms and conditions for provider use of the rights-of-way. Key elements of the Metro Act included agreement on a standard, statewide application form for use of the rights-of-way; standard forms[7] of permits for such use (commonly called Metro Act permits); *based upon the forms themselves having been already agreed to by all parties* a short time frame (45 days) for municipalities to act on applications (with immediate, quick MPSC resolution of any disputes); and a uniform fee, generally 5 cents foot/year, for use of the rights-of-way.

The resulting legislation was worked out in lengthy State supervised negotiations involving the actual "worker bees" at the affected parties -- providers and their legal staffs and

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[6] Mich. Comp. Laws Ann. § 484.3115(2).

[7] Which the parties are allowed to -- and do -- vary by agreement.

right-of-way staffs; municipal managers, attorneys and right-of-way engineers; regulators -- to reach a comprehensive result which addressed the many and varied issues of usage and implementation that are involved.

The City of Detroit, the Michigan Municipal League, the Michigan Townships Association and PROTEC were participants in this process where the state-specific Michigan situation resulted in an equally state-specific solution -- the Metro Act.[8] It is not a national model.

C. Provider Comments Show No Need for Commission Action: First, *no provider* commented adversely about Michigan on right-of-way matters. This clearly shows that there is no basis for Commission action as to Michigan.

Second, the preceding point is reinforced by the fact that the two providers who did mention Michigan commented favorably on the Metro Act -- obviously indicating that they have not had problems there. Together, these points show that there are no significant problems caused by municipalities in Michigan that are delaying or deterring broadband deployment, and thus creating a need or basis for Commission action.

The two providers are NextG and PCIA. NextG said in its comments:

> "Some states have alleviated the often unpredictable, time-and-resource-consuming local processes by adopting legislation that effectively preempts municipalities and counties from imposing individual franchise requirements and processes. In such instances, these States have adopted regimes which are intended to streamline, if not minimize, the process of granting access to the public way for the provision of telecommunications services to a provider. For example: . . .

[8] The result was a compromise with no party's desires being completely satisfied. For this reason and with the experience of nearly decade of the Act's implementation, some municipalities and municipal groups have concerns about aspects of the Metro Act and its implementation, and may seek changes.

> The **State of Michigan** passed the METRO Act which promulgates two model legal agreements (the difference simply being the length of the term), which must be passed at the local level within a prescribed period of time; service providers annually report current linear distances of facilities (i.e., cable) deployed in the right of way and in turn remit compensation (upon invoice) comparable to franchise fees to the state level, where the delegated centralized authority distributes same to the respective jurisdictions. Under the Michigan METRO Act, a municipality shall grant to a telecommunications provider a permit for access to the public rights-of-way within its boundaries, and it must do so within 45 days from application for a permit. Moreover, a municipality in a metropolitan area shall not enact, maintain or enforce any requirements applicable to telecommunications providers that require additional fees or consideration for access to the rights-of-way, other than the Metropolitan Extension Telecommunications Right-of-Way maintenance fee (discussed above).
>
> Despite some local issues in these states (most often associated with the lack of knowledge of the state statute and/or local ordinance), in most cases such streamlined legislation has allowed service providers to minimize the front-end approvals often required prior to permitting and allow for more expedited commencement of construction and service provision."[9]

Although NextG is wrong on some of the details of the Metro Act (for example, local control of the rights-of-way is maintained, and providers and municipalities can and do vary the statewide application and permit forms if they so choose (with any disagreements subject to immediate resolution by the MPSC))[10] the Metro Act has streamlined the process for providers. That does not, of course, mean that municipalities were not themselves streamlining the process; or would have delayed processes absent the Metro Act. The point is that a federal solution is not required, and not sensible for Michigan or elsewhere. A key element of any streamlining is compliance. No system will work if providers ignore requirements, and the enforcing authority is not in a position to resolve disputes quickly. A federal regime would require the FCC to resolve thousands of disputes. A key element is flexibility – the ability to adjust over time to

[9] Comments of NextG Networks, Inc. at 30-31 (emphasis in original, citations omitted).

[10] Mich. Comp. Laws Ann. § 484.3106 (1)-(3).

resolve problems that are actually arising. Again, a federal regime would remove flexibility that is essential.

In a similar vein PCIA said:

> "The FCC should encourage Congress to clarify federal law and set out clear, uniform processes and/or standards for accessing public rights of way to install DAS facilities, or at a minimum encourage states to adopt similar legislation. Any such legislation should minimize the applicability of zoning/planning, public hearings and aesthetics reviews. The Michigan Metro Act, while not perfect, is a good example."[11]

While Michigan Local Governments appreciate the comments about Michigan, and PCIA's and NextG's recognition that Michigan communities are not by their actions deterring or delaying broadband rollout, they disagree that the FCC needs to, can or should act as PCIA suggests. But the providers' comments show that as to Michigan there is no need or basis for Federal action on right-of-way matters; and fail to show that there is any need to do so elsewhere.

III. WIRELESS MATTERS -- THERE IS NO FACTUAL BASIS OR NEED FOR COMMISSION ACTION:

A. Provider's "Facts" Massively Inaccurate; Provide No Basis for Commission Action:

The Commission was wise in the NOI to require each provider to "name the specific government entity it is referring to, and describe the actions that are specifically cited" when providers made claims of problems in their comments. Specifically the Commission said:

[11] PCIA Comments at 44 (emphasis supplied, citations omitted).

> "So that we might have a factual basis upon which to determine the nature and extent of any problems, we ask commenters to provide us with information on their experiences, both positive and negative, related to broadband deployment. In the case of comments that name any state or local government or Tribal or federal entity as an example of barriers to broadband deployment, we strongly encourage the party submitting the comments to name the specific government entity it is referring to, and describe the actions that are specifically cited as an example of a barrier to broadband deployment, as this is the best way to ensure that all affected parties – the relevant governmental entity, citizens and consumer groups, and other private parties that have sought access in the area – are able to respond to specific examples or criticisms. Identifying with specificity particular examples or concerns will ensure that the Commission has a complete understanding of the practices and can obtain additional background if appropriate."[12]

This was wise because as to Michigan (and apparently nationwide) the factual claims by providers on wireless matters are wildly inaccurate, with error rates in the 90% to 100% range. With error rates so high, the data from providers provides no "factual basis" for Commission action of any kind.

In particular, Michigan Local Governments started to contact the Michigan communities named in PCIA's Comments as having acting improperly in some respect. PCIA was the only commenter to name Michigan communities in the initial comments in this proceeding -- and even then only on certain wireless (not right-of-way) matters. After getting approximately half way through the list (and over 90% through the list, if weighted by population), they stopped, because every community contacted refuted PCIA's claimed "facts". The error rate was so high as to remove any possible basis for Commission action, thus not making it worthwhile to expend the effort needed to contact additional communities.

For example, PCIA in its comments engaged in a diatribe against consultants, stating that consultants are unnecessary, that they "require" municipalities to adopt their wireless zoning ordinance and that "in nearly all cases" the cell tower company pays the consultant's fees, thus

[12] NOI at 5-6 (emphasis supplied).

giving the consultant a motive to drag out the cell tower zoning process.[13] PCIA went on to state that Exhibit B to its Comments "lists a few of the jurisdictions that utilize wireless consultants with a history of this problematic practice."[14]

There is one major problem: As to Michigan PCIA's list of communities using "problematic consultants" is largely if not completely false. Those communities whom Michigan Local Governments contacted said that in fact they don't use consultants!

For example:

- PCIA names the City of Detroit as one community who uses "problematic consultants."[15] In fact, the City of Detroit for the past 12 years has used no consultants at all on wireless zoning applications! At over 700,000 residents, Detroit is far and away the largest city in Michigan, and in fact is the 18th largest in the U.S. So on a population weighted basis PCIA's error as to the City of Detroit alone puts PCIA's Michigan error rate over 90%.[16]
- The City of Harbor Beach is similarly named.[17] It too does not use consultants on cell tower zoning matters!
- PCIA also names the City of Fenton.[18] But for at least 10 years Fenton has used no consultants on wireless zoning matters.

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[13] PCIA Comments, pp 23-24.

[14] Id, p 24.

[15] PCIA Comments, Exhibit B, p. 15.

[16] According to the 2010 Census, Detroit's population was 714,000 and that of the state as a whole was 9.9 million (both figures rounded), giving an error rate of 92.8%.

[17] Id.

[18] Id.

PCIA statements as to Michigan are 100% wrong when it says that zoning "frequently rules out entirely some types of zoning districts for the placement of wireless facilities" and then refers to communities listed on Exhibit B to its comments.[19]

The true situation as to the two Michigan communities listed on Exhibit B is as follows:

- Battle Creek, Michigan, is the first Michigan community on Exhibit B.[20] As the letter filed by the City of Battle Creek in this docket shows, PCIA's statement is simply false – the City in fact allows cell towers or antennas in all zoning districts.[21]
- Bedford Township is the only other Michigan community listed by PCIA.[22] In fact the Bedford Township zoning ordinance also allows cell towers in all zoning districts. It expedites zoning approval (no public hearing, approval granted administratively, application deemed approved if not acted on in 60 days) for collocations and antennas on schools, water towers, agricultural land, and existing commercial, industrial, professional, institutional and multi-family structures.[23] All other antennas and towers fall must comply with the general provisions set forth in the Township's zoning ordinance.[24]

[19] PCIA Comments at 32.

[20] PCIA Comments, Exhibit B, page 10.

[21] Battle Creek City Attorney, August 30, 2011 letter comment in this docket.

[22] PCIA Comments, Exhibit B, page 10.

[23] Bedford Twp Code of Ordinances, § 400.1918(2)(f) and (g).

[24] Id. § 400.1918(2)(h).

From contacts with other communities across the nation that have been named as "bad actors" on wireless matters by PCIA or other industry commenters in this docket, Michigan Local Governments have learned that their experiences are much the same: The "facts" claimed by industry commenters have huge error rates, sometimes at or approaching 100%.

Thus the Commission is to be commended for requiring providers to "name names" so that facts to be checked. Checking has shown such large error rates that there is no basis for Commission action as to Michigan (or apparently other states) on the zoning or other deficiencies on wireless matters claimed by providers.

B. Zoning Problems are Largely Caused by Providers: Industry comments attempt to portray wireless zoning problems as being caused by municipalities.

In fact the reverse is almost always the case – the problems are self-inflicted. This is often because many companies within the cellular industry farm out cell tower leasing and zoning matters to local contractors who are ill trained, not knowledgeable and are not supervised by the provider. The results are not only many filing inaccuracies (requiring zoning applications to be held or resubmitted because they are incomplete), but errors to the point of litigation instigated by the provider being dropped because there was no basis for the suit in the first place.

Specifically, in too many instances, Michigan communities report that the work by local contractors hired by providers to lease and obtain zoning approval for cell sites at best can be described as "sloppy." For example:

- Detroit and other local governments report numerous instances of incomplete filings where required items (such as clearance letters from State Historic Preservation Officers or photographs showing what the proposed location would look like before and after the cell tower is installed) simply were not included in the application.

- In other cases, providers in zoning applications certified that the site in question was in compliance with applicable zoning and building safety codes. But in fact the site had safety problems in that it was out of compliance with building safety codes. Or on collocations, the conditions attached to the approval of the initial cell tower for the site (paintings, landscape screening, etc.) had not been complied with.
- Failure to comply with historic preservation requirements is a common problem. For example, a provider or local agent will often certify that there are no historic sites nearby when, in fact, knowledgeable city staff knows that there is one right across the street.

In fact, to alleviate (or at least reduce) zoning problems, the City of Detroit routinely goes so far as to run informal training sessions on local zoning and permitting procedures when new people are hired by the contractors for wireless providers to work with the City on wireless matters. When the Commission considers "educational efforts" it may wish to consider encouraging providers to require all their contractors and agents to support and attend locally run training.

Perhaps the best example of sloppiness by providers comes from the City of Lansing, Michigan. There only after five years, multiple zoning hearings, and a Federal Court suit did T-Mobile abandon a proposed location for a cell tower -- because the site was under water part of the year, and not buildable!

Specifically, T-Mobile began looking for a site in Lansing in 2003 to close a claimed "coverage gap" and leased a site in 2004. In April 2004 T-Mobile applied for zoning approval for the site, but after several public hearings, in August 2004 withdrew its zoning application due to claimed funding constraints.

In 2006, T-Mobile revived its zoning application for the site, which application was ultimately turned down by the City Council in October 2007. T-Mobile filed suit against the City in Federal Court under 47 U.S.C. 337(c) in December 2007.[25] After the City pointed out that parts of the site were under water part of the year, and thus the site was not buildable, T-Mobile in August 2008 abandoned the site and dismissed the suit with prejudice.[26]

It is astounding that T-Mobile could have pursued a site for so many years -- to the point of a Federal Court lawsuit -- and never discovered that the site in question was under water part of the year.

Unfortunately, this is the level of competence that municipalities often face when dealing with cell tower zoning matters. Thus the Commission needs to view with great skepticism allegations by providers that they are careful or thorough in their cell tower zoning applications, and attempts by them to lay the blame for zoning problems at the doorstep of municipalities. Often the wounds are self-inflicted, as Lansing's experience indicates.

C. Claimed Leasing Problems are Self-Inflicted, Zoning Changes Not the Solution: AT&T and other providers argue that because they have a hard time leasing property for cellular towers therefore wireless zoning restrictions should be relaxed.[27]

In fact, there is no connection between the two. More importantly, the experience of Michigan municipalities' from their own cell tower lease negotiations is that providers' claimed leasing problems are largely self-inflected. This is because the lease terms requested by the cell

[25] T-Mobile Central LLC v City of Lansing (WD Mich 2007), Case No. 1:07-cv-1173-RJJ. The preceding recitation of facts is taken from T-Mobile's complaint.

[26] *See* Order of Dismissal, Case 1:07-cv-01173-RJJ Doc #40 Filed 08/21/08.

[27] See, e.g., AT&T Comments at 10-13.

tower companies are overreaching, to the point they quite understandably deter property owners from signing. Some examples are as follows:

First, one of the most important is that proposed leases state that the land being leased is to be used as a "communications facility".[28] But that term that is not defined in the proposed lease, let alone tied to RF based usage. And providers refuse to agree even to such reasonable restrictions as restricting the facilities to be installed to "personal wireless service facilities" as defined in 47 U.S.C. § 332(c)(7)(C)(ii).

This refusal is critical and cynical, because providers are trying have it both ways with municipalities and this Commission: Insisting on the one hand of availing themselves of the cell tower zoning provisions of this Commission's shot clock order and the Communications Act, while at the same time entering into leases which allow them to install facilities not covered by the Act or order, which are restricted to "personal wireless facilities".

This inconsistency removes any conceivable legal basis for provider's claims that their "leasing problems" should lead to restrictions on local zoning -- industry leases for lands to be used for other than "personal wireless services" are simply outside the purview of Section 332(c)(7) of the Act.

Second, the lease term is 50 years, structured as options for the provider to extend the lease at 5-year intervals, but with the provider basically having the ability to cancel the lease at any time. So the landlord is faced with (1) committing for half a century (2) to allow its land to be used for a poorly defined purpose, while (3) the provider can basically get out of the lease at any time. This rather exemplifies the term "one-sided".

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[28] This example is taken from Verizon's standard offer, other providers' offers are similar.

Third the provider's use of the leased land is primary and trumps the landlord's use not only of (1) the parcel being leased, but typically also of (2) the parent parcel (often several hundred acres) from which it is carved out, and often also (3) any "nearby" properties owned by the landlord. This is due to "noninterference" clauses in the proposed lease that prevent the landlord from making any use of its adjacent or "nearby" lands which "interfere" with the provider's "communications facility". Thus the landlord is faced with the prospect that for up to 50 years the lease will restrict or prevent its future use or expansion of buildings or operations on its main piece of land, or other nearby lands. With cell tower leases being peripheral to the landlord's main business, they often reject lease proposals due to the long term threat such leases create -- the tail wagging the dog.

Fourth, providers usually insist on a right of first refusal with 30-60 day notice provisions should the landlord choose to sell the parent parcel from which the cell tower site is carved out. These are strongly disliked by knowledgeable landlords. The main reason is that rights of first refusal have a significant adverse impact on the value of the property. This is because they give someone else the chance to match the "best deal" a prospective purchaser has negotiated. The prospective purchaser thus will not know for one to two months whether it even has a binding contract to buy the land. And the notice period often exceeds the time period for which a prospective buyer can lock in financing or a known mortgage rate. The result is that rights of first refusal can decrease sales prices by 10 to 30 percent.

And these financial impacts are <u>not</u> just impacts at some sale date in the distant future – they are reductions in the <u>current</u> value of the property as collateral for loans. So the property owner's current financial situation – its balance sheet and ability to get loans for its business – is harmed.

Finally, much real estate is subject to a mortgage. A mortgage holder may veto a cell tower lease due to some or all the provisions set forth above, as they diminish the value of its collateral.

These points illustrate how providers bring leasing problems on themselves and landlords understandably reject proposed leases -- not only by providers' specific actions, but by such actions creating a reputation which makes landlords skeptical about considering wireless leases at all.

Thus, before the Commission credits any claims of "site unavailability", it should ask each of the major providers to provide and publish their standard leasing terms, and examine them from a real estate standpoint – with the assistance of a knowledgeable real estate expert or attorney who works with or represents landlords. While it is may be permissible for companies to propose that property owners accept one-sided deals (some certainly will), it is not a path to rapid broadband deployment.

IV. CONCLUSION

A decade ago Michigan addressed and resolved the right-of-way matters described in the NOI. The result was a comprehensive, statewide solution streamlining use of the rights-of-way by broadband and telecommunications providers, which is commonly known as the Metro Act. Providers agree that Michigan has already addressed the right-of-way matters raised in the NOI. There is thus no need for Federal action as to such matters in Michigan, should the Commission have the legal authority to do so (which it does not). And as the comments of the National League of Cities, et al point out) that there is no need for federal regulations elsewhere, either.

There is no need or factual basis for Commission action on wireless matters. The alleged "facts" cited by providers as showing a need for action, are (as to the Michigan communities named) from largely to 100% incorrect. The error rate for the rest of the nation appears to be in a similar range. And most of the problems claimed by providers in fact are self-inflicted.

Respectfully submitted,

John W. Pestle (P25471)
Timothy J. Lundgren (P62807)
Varnum LLP
333 Bridge Street, N.W.
P.O. Box 352
Grand Rapids, Michigan 49501-0352
(616) 336-6000

Counsel for the City of Detroit, Michigan Municipal League and Michigan Townships Association

Michael J. Watza (P38726)
Kitch Drutchas Wagner Valitutti & Sherbrook
1 Woodward 24th Floor
Detroit, MI 48226
(313) 965-7983

Counsel for PROTEC

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